SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 293

JOSEPH G. WENNING,

Appellant,

vs.

THE PEOPLES BANK COMPANY OF COLDWATER, OHIO; JOHN C. WEIGEL, JOSEPH PLEIMAN, GEORGE FRONING, EMMA FRONING, LAWRENCE M. DAVIS, RALPH J. AHLERS; THE CENTURY INDEMNITY COMPANY OF HARTFORD, CONNECTICUT; THE UNITED STATES FIDELITY AND GUARANTY COMPANY OF HARTFORD, CONNECTICUT,

Respondents

STATEMENT AGAINST JURISDICTION OF THE UNITED STATES SUPREME COURT AND MOTION TO DISMISS.

Now comes Lawrence M. Davis, former Sheriff of Mercer County, Ohio, Ralph J. Ahlers, former Deputy Sheriff of Mercer County, Ohio and the Century Indemnity Company of Hartford, Connecticut, Surety on Sheriff Davis' Bond, and move the Court to dismiss this appeal as of right for

the reason that no debatable Constitutional question is involved.

In the decision as rendered by the State Court (Common Pleas, Court of Appeals and Supreme Court) there were no decisions against the validity of any of the numerous statutes of the United States that are numbered and quoted in the statement in support of jurisdiction as has been filed by the appellant herein. In none of the opinions in the State Courts as decreed was there drawn in question the validity of a state statute of Ohio on the ground of its being repugnant to the Constitution or laws of the United States and the decision in favor of the validity of the State Statute.

WHEREFORE: As the decision of a federal question was not necessary to the judgments rendered and was not made the ground of such judgments, the respondents move that the appeal of Joseph G. Wenning be dismissed for want of jurisdiction.

Dated this 25th day of July, 1950.

CARLETON CARL REISER,
Attorney for Lawrence M. Davis, former Sheriff of Mercer County, Ohio; Ralph J. Ahlers, former Deputy Sheriff of Mercer County, Ohio and the Century Indemnity Company of Hartford, Connecticut, Surety on Sheriff Davis' Bond.

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CHARLES ELMORE

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Respondents

STATEMENT AGAINST JURISDICTION OF THE UNITED STATES SUPREME COURT AND MOTION TO DISMISS.

The Peoples Bank Company of Coldwater, Ohio, filed its petition for foreclosure against Joseph G. Wenning, the Appellant, on September 7, 1934, in the Court of Common Pleas of Mercer County, Ohio, when the Court had exclusive jurisdiction of the parties and subject matter, as the petition of Wenning as a farmer debtor was filed in the Federal Court, subsequent to said date. The voluntary dismissal by Wenning of the entire proceedings under # 75, 11 USCA # 203, on August 6th, 1935, rendered such

proceedings nugatory and the conditions were then the same as if such proceedings were never instituted in the Federal Court.

When the Federal Land Bank of Louisville, Kentucky, obtained a judgment against Joseph G. Wenning in the same case on its answer and cross-petition, on *January 26th, 1938*, which judgment and decree ordered foreclosure, sale and appraisement, there was a valid judgment in the court of Common Pleas of Mercer County, Ohio, as Wenning did not have a federal case pending in bankruptcy at that time (this is not disputed as it was admitted by counsel for appellant in the Courts below).

On *October 10th, 1938*, The Federal District Court dismissed the petition of Joseph G. Wenning, as a farmer debtor, and ordered that all stay orders heretofore entered hereunder are set aside and held for naught.

On December 17th, 1938, The Court of Common Pleas of Mercer County, Ohio, confirmed the sale of said real estate to the purchaser, as the result of a sale held by the sheriff on March 12th, 1938, and Joseph G. Wenning did not have a federal case pending in bankruptcy at that time. The state court had exclusive jurisdiction of the parties and subject matter when the decree of confirmation was entered and its decree cannot be collaterally attacked. (*Robertson* v. *Haward*, 229 U. S. 254.)

In the case of *Union Joint Stock Land Bank of Detroit* v. *Byerly*, 310 U. S. 1, the court said: "The sale was, however, incomplete until confirmation by the Court. Until confirmation it amounted to an unaccepted offer to purchase. No sale was consummated while the bankruptcy proceedings were pending. The termination of the bankruptcy proceedings restored the jurisdiction and power of the State Court. . . . Although the State Court's jurisdiction was suspended by that of the bankruptcy court, it again attached upon the dismissal of the bankruptcy case,

and, thence forward, as respects the foreclosure suit, and the State Court's procedure, it was as if no bankruptcy case had ever existed".

After discussing the actions of the State court in the Byerly case, the court in its opinion said:

> "If it erred in that respect its action was subject to correction by appeal but not subject to attack in a collateral proceeding".

In the decisions as rendered by the State Courts (Common Pleas; Court of Appeals and Supreme Court) there were no decisions against the validity of any of the numerous statutes of the United States that are numbered and quoted in the statement in support of jurisdiction, as has been filed by the appellant herein.

In none of the opinions in the State Courts as decreed, was there drawn in question the validity of a state statute of Ohio on the ground of its being repugnant to the Constitution or laws of the United States and the decision in favor of the validity of the state statute.

WHEREFORE: As the decision of a federal question was not necessary to the judgments rendered and was not made the ground of such judgments, the respondents move that the appeal of Joseph G. Wenning be dismissed for want of jurisdiction.

Dated this 22nd day of July 1950.

HENRY J. KNAPKE,
Attorney for The Peoples Bank Company of Coldwater, Ohio; Joseph Pleiman and John C. Weigel, Appellees.

KAHL K. SPRIGGS,
Of Counsel.